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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,922	02/05/2004	Takeshige Yokota	005184.107294	5247

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 09/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/772,922	Applicant(s) YOKOTA, TAKESHIGE	
	Examiner Steven L. Weinstein	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

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It is noted that the claim language is such that the claims are being read as not positively reciting contents within the packet. See, in this regard, claim 1 which recites that the packet device is "for" containing powdered tea or other nutritional substances. That is, such a phrase is read that the packet is capable of containing the substances. To make a positive recitation of contents would require a phrase such as wherein the packet contains the substances. The following rejections are based on this analysis of the claim language.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,4, and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Savoir (4,432,455).

In regard to claim 1, Savoir discloses a beverage container with a packet device(#1) , which would be capable of containing almost any content including powdered tea or other nutritional substance and which would also be capable of being attached to the beverage container at the neck thereof. Savoir, for example, discloses the packet can contain medicinals in tablet, capsule or pill form, or additives, to be added to the contents of the bottle, such as sweeteners or flavors. This is all claim 1 positively recites. In regard to claim 2, claim 2 recites that the packet device "is prepared" to contain 1 to 8 grams of tea or supplement. The packet of Savoir would also

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be capable of containing such an amount of tea or supplement. In regard to claim 4, Savoir discloses the packet device is "made out of" aluminum (e.g. col.1, para. 9).

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Savoir as applied to claim 1 above, and further in view of Bowman et al (US2004/0007490).

Claim 3 recites that the packet is shaped like a leaf. The particular shape one chooses to impart to a package is seen to have been an obvious matter of choice and/or design, especially when the shape has no utility function other than esthetics. In any case, as evidenced by Bowman et al, it was conventional to not only impart a recognizable real-life shape to packages, but it was also conventional to impart a shape to the package that relates to the contents of the package. To therefore modify Savoir and employ a leaf shaped package would have been obvious if one were packaging a content that relates to leaves in some manner.

The remainder of the references cited on the PTO 892 form are cited as pertinent art. For example, Lynn (2,863,778) discloses associating a vitamin packet (i.e. a nutritional substance) with a container of food. Clay (US 2003/0213707) discloses associating a food packet, that can be metal, with a bottle. Barton (4,635,291) also discloses a metallic packet associated with a bottle containing food. Confiserie Chocolaterie (FR2042241) disclose packages with shapes that relate to the contents. Wu discloses green tea in aluminum foil packaging. Sasaki discloses a packet of green tea that is associated with a container and is to be added to the container.

To expedite prosecution, by anticipating a future urging on the part of applicant, even if the claims were to be amended by positively reciting the contents, the claims

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would still be unpatentable. The art, taken as a whole, both applied and cited, would fairly teach one of ordinary skill in the art to provide tea or nutritional ingredients in a package that is capable of being associated with a bottle or other container.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday from 7:00AM to 2:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Steve Weinstein
STEVE WEINSTEIN 1761
PRIMARY EXAMINER